

**Town of Mashpee
Annual Town Meeting
October 17, 2011**

Town Meeting convened at 7:10 PM
Voters Present-260
Quorum-0

Barnstable, ss:

Greetings

To the Constables of the Town,

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and summon the inhabitants of the Town of Mashpee who are qualified to vote in the elections to meet at the Mashpee High School on Monday, the 17th day of October 2011 at 7:00 p.m. for the following purposes:

To act on the articles contained in the following Warrant.

Article 1

To see if the Town will vote to appropriate and transfer from available funds \$ 1,693.73 to pay previous fiscal year unpaid bills as follows:

Cape Cod Family Practice and Sports Med	\$387.00
Cape Cod Hospital	\$175.00
One Communications (Earthlink)	\$1,131.73

or take any other action relating thereto.

Submitted by the Town Accountant

Explanation: This article is necessary to pay Fiscal Year 2011 bills received after the close of the fiscal year.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Wayne Taylor.

Motion: I move the Town vote to appropriate and transfer from the Overlay Surplus Account \$1,693.73 to the departmental unpaid bill account, with said funds to be contributed by the Town Accountant.

Motion passes unanimously at 7:17 PM.

Article 2

To see if the Town will vote to appropriate and transfer \$17,419 from the Waterways Improvement Fund Account to the Waterways Maintenance Account, or take any other action relating thereto.

Submitted by the Board of Selectmen

Explanation: The funds requested will be used to offset the cost of Waterways Assistants.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Michael Richardson.

Motion: I move the Town vote to appropriate and transfer \$17,419 from the Waterways Improvement Fund Account to the Waterways Maintenance Account.

Motion passes unanimously at 7:18 PM.

Article 3

To see if the Town will vote to appropriate and transfer \$6,600 from the Library Salary/Wage Account to the Library Expense Account, or take any other action relating thereto.

Submitted by the Board of Selectmen

Explanation: This transfer will provide funding to cover the costs associated with hiring a temporary circulation assistant through contract services.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Carol Sherman.

Motion: I move the Town vote to appropriate and transfer \$6,600 from the Library Salary/Wage Account to the Library Expense Account.

Motion passes unanimously at 7:18 PM.

Article 4

To see if the Town will vote to appropriate and transfer \$8,600 from the Building Department Salary/Wage Account to the Building Department Expense Account, or take any other action relating thereto.

Submitted by the Board of Selectmen

Explanation: This transfer will provide funding to cover the costs associated with hiring a temporary Building Commissioner through contract services.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman John Cahalane.

Motion: I move the Town vote to appropriate and transfer \$8,600 from the Building Department Salary/Wage Account to the Building Department Expense Account.

Motion passes unanimously at 7:19 PM.

Article 5

To see if the Town will vote to appropriate and transfer \$6,720 from various departmental vehicle expense accounts to the Town Hall Vehicle Fuel/Maintenance Account as follows:

Department	Transfer Amount
Assessing	\$1,200
Conservation	\$1,685
Inspections	\$2,000
Board of Health	\$1,400
Recreation	\$435

or take any other action relating thereto.

Submitted by the Board of Selectmen

Explanation: The Town has consolidated its fleet of vehicles to be utilized under the direction of the Town Manager. This transfer is necessary to establish a vehicle maintenance account for the pool of vehicles.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Thomas O’Hara.

Motion: I move the Town vote to appropriate and transfer from the various departmental vehicle expense accounts to the Town Hall Vehicle Fuel/Maintenance Account as follows:

Department	Transfer Amount
Assessing	\$1,200
Conservation	\$1,685
Inspections	\$2,000
Board of Health	\$1,400
Recreation	\$435

Motion passes unanimously at 7:20 PM.

Article 6

To see if the Town will vote to transfer \$80,000 from the Assessors Overlay Surplus Account to the Assessors Revaluation Account, or take any other action relating thereto.

Submitted by the Board of Assessors

Explanation: This article is necessary to transfer existing monies to fund the Assessor’s Revaluation Account for costs related to meeting the Department of Revenue’s annual and triennial certification requirements. All towns are required by the D.O.R. to maintain a revaluation account for costs relating to valuation consultants, Appellate Tax Board expenses, private appraisals, defense of values and various other requirements to ensure accurate assessments and timely issuance of tax bills.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Wayne Taylor.

Motion: I move the Town vote to appropriate and transfer \$80,000 from the Assessors Overlay Surplus Account to the Assessors Revaluation Account.

Motion passes unanimously at 7:21 PM.

Article 7

To see if the Town will vote to appropriate and transfer \$15,000 from the Waterways Improvement Fund Account to the Waterways Maintenance Account, or take any other action relating thereto.

Submitted by the Waterways Commission

Explanation: This article will transfer funds from the Waterways Improvement Fund to be used by the Harbormaster for the following equipment, repairs and maintenance;

\$4,000 Large Waterway equipment repairs, props, bottom paint,
Hauling, oil & filters, batteries, steering cable, decals

\$1,000 Navigational Aids

\$2,000 Boat Winterization

\$1,000 Spring tune-ups & Season boat prep

\$1,000 Repair/Replace Electronics

\$6,000 Outboard Engine

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Michael Richardson.

Motion: I move the Town vote to appropriate and transfer \$15,000 from the Waterways Improvement Fund account to the Waterways Maintenance Account.

Motion passes unanimously at 7:21 PM.

Article 8

To see if the Town will vote to appropriate and transfer \$50,000 from the Waterways Improvement Fund Account to the Waterways Dredging Account, or take any other action relating thereto.

Submitted by the Waterways Commission

Explanation: These funds are necessary to enable the Town to respond to emergency repair/dredging of Mashpee's Waterways should unforeseen storm damage/ channel blockage occur. These monies would cover short haul or long haul dredging and repairs as might be required and would be readily available should an event occur.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Carol Sherman.

Motion: I move the Town vote to appropriate and transfer \$50,000 from the Waterways Improvement Fund Account to the Waterways Dredging Account.

Motion passes unanimously at 7:22 PM.

Article 9

To see if the Town will vote to appropriate \$60,000 to the Kids Klub Enterprise Fund Capital Expense Account for the purpose of capital improvement expenses associated with the enterprise, and to fund said appropriation from the retained earnings of the enterprise, or take any other action relating thereto.

Submitted by the Recreation Department

Explanation: This article will set aside funding for capital expenditures for the Kids Klub Enterprise.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman John Cahalane.

Motion: I move the Town vote to appropriate and transfer \$60,000 to the Kids Klub Enterprise Fund Capital Expense Account for the purpose of capital improvement expenses associated with the enterprise, and to fund said appropriation from the retained earnings of the enterprise.

Motion passes unanimously at 7:23 PM.

Article 10

To see if the Town will vote to rescind the authority to issue the following un-issued balances of authorized bonds or notes pursuant to the votes adopted under the following articles to the extent not previously exercised, or take any other action relating thereto.

Town Meeting Date	Article #	Balance	Purpose
5/1/03	#11	\$446,419	2003 Chapter 90
5/1/06	#4	\$537,124	2007 Chapter 90
5/7/07	#17	\$10,284	Wintergreen Road Project
5/7/07	#19	\$84,618	Cayuga Ave Road Project
5/7/07	#23	\$78,125	Greenwood Road Project
5/7/07	#22	\$7	Regatta Road Project
5/5/08	#17	\$21,060	Preakness Lane Road Project
5/5/08	#19	\$1,764	Equestrian Ave Road Project
5/4/09	#19	\$68,107	Bayridge Road Project
10/19/09	#20	\$41,266	Forest Drive Road Project

Submitted by the Town Accountant

Explanation: This article is for the purpose of rescinding loans authorized for capital projects that have been completed. This will enable the Town Accountant to remove the un-issued balances from the General Ledger.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Thomas O'Hara.

Motion: I move the Town vote to rescind the authority to issue the following un-issued balances of authorized bonds or notes pursuant to the votes adopted under the above-listed articles to the extent not previously exercised.

Motion passes unanimously at 7:24 PM.

Article 11

To see if the Town will vote to transfer care, custody and control of a portion of the real property identified as the Town of Mashpee Landfill/Transfer Station, located at 380 Asher's Path East, shown on Mashpee Assessor's records as Parcel 61-3-0-E, to the Board of Selectmen for the purpose of disposition and lease for the construction and operation of a solar photovoltaic energy generating facility, and to authorize the Board of Selectmen and/or Town Manager to enter into such agreements and to execute such instruments or leases as may be required for this purpose upon such terms and conditions as the Selectmen shall deem to be in the best interest of the Town, or take any other action in relating thereto.

Submitted by the Board of Selectmen

Explanation: This article will transfer the care and custody of property identified as the Landfill property to the Board of Selectmen for the purpose of the proposed lease, and grant authorization to the Board to enter into agreements and execute all instruments necessary for the lease, construction and operation of a solar photovoltaic facility on said property.

The Board of Selectmen recommends approval by a vote of 5-0.

Finance Committee recommends approval.

Motion made by Selectman Wayne Taylor.

Motion: I move the Town vote transfer care, custody and control of a portion of the real property identified as the Town of Mashpee Landfill/Transfer Station, located at 380 Asher's Path East, shown on Mashpee Assessor's records as Parcel 61-3-0-E, to the Board of Selectmen for the purpose of disposition and lease for the construction and operation of a solar photovoltaic energy generating facility, and to authorize the Board of Selectmen and/or Town Manager to enter into such agreements and to execute such instruments or leases as may be required for this purpose upon such terms and conditions as the Selectmen shall deem to be in the best interest of the Town.

Motion passes unanimously at 7:27 PM.

Article 12

To see if the Town will vote, pursuant to the provisions of G.L. c.59, §38H, to authorize the Board of Selectmen and Board of Assessors to negotiate and enter into a payment in lieu of tax agreement with the lessee/operator of the solar photovoltaic energy generating facility to be developed at the Mashpee Landfill/Transfer station property, located at 380 Asher's Path East, shown on Mashpee Assessor's

records as Parcel 61-3-0-E, upon such terms and conditions as the Board of Selectmen and Assessors shall deem to be in the best interest of the Town, or take any other action relating thereto.

Submitted by the Board of Selectmen

Explanation: This article will authorize the Board of Selectmen and Board of Assessors to negotiate and enter into a payment in lieu of taxes agreement with the lessee/operator of the solar photovoltaic facility over the term of the proposed land lease.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval.

Motion made by Selectman Michael Richardson.

Motion: I move the Town vote, pursuant to the provisions of G.L. c.59, §38H, to authorize the Board of Selectmen and Board of Assessors to negotiate and enter into a payment in lieu of tax agreement with the lessee/operator of the solar photovoltaic energy generating facility to be developed at the Mashpee Landfill/ Transfer station property, located at 380 Asher's Path East, shown on Mashpee Assessor's records as Parcel 61-3-0-E, upon such terms and conditions as the Board of Selectmen and Assessors shall deem to be in the best interest of the Town.

Motion passes unanimously at 7:30 PM.

Article 13

To see if the Town will vote to amend General Bylaws, Chapter 3, Article VII – Board of Sewer Commissioners, §3-25, Membership, Terms by deleting the first sentence and replacing it with the following:

“The Board of Sewer Commissioners shall consist of seven (7) voters of the Town appointed by the Selectmen, one (1) from each of the five (5) precincts and two (2) appointed at large. Should no suitable candidate apply for any vacant position intended to represent a precinct after thirty (30) days of advertisement of the vacancy by the Selectmen, the Board of Selectmen may re-advertise the vacancy and appoint any qualified applicant who is a voter of the Town.”

or take any other action relating thereto.

Submitted by Sewer Commission

Explanation: The requirement that five members of the Board of Sewer Commissioners represent each of the Town's five precincts may lead to a lack of interested candidates from a precinct, leaving the Board short of its specified seven members. This article would provide that the Selectmen attempt to find suitable representatives from each precinct, but that if no candidate applies after 30 days of advertising the position, the Selectmen may open the position to, and appoint, any qualified voter of the Town.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Carol Sherman.

Motion: I move the Town vote to approve Article 13 as printed in the warrant with the exception of the phrase “or take any other action relating thereto”.

Motion passes at 7:35 PM

Article 14

To see if the Town will vote to authorize and empower the Board of Selectmen to prepare a plan laying out a defining Holly Way, Elm Lane, Autumn Drive, Attaquin Street, Pocknomet Street, Hornbeam Lane, Lantern Lane, Beachwood Drive, Hemlock Drive, and Fir Court; and to accomplish said purpose and for expenses incidental and related thereto, the Town vote to raise and appropriate or transfer from available funds for appropriation \$15,000 to the Timberland Shores Roadways Account, or take any other action relating thereto.

Submitted by the Board of Selectmen

Explanation: This article will authorize the Board of Selectmen to prepare a plan laying out said ways for conversion from private to public ways. This is a necessary step in the overall clean-up of Santuit Pond. A study of the Pond conducted by AECOM has revealed direct road run off into the pond, through this taking the Town will correct the drainage/runoff issue.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommend approval by a vote of 5-1.

Motion made by Selectman John Cahalane.

Motion: I move the Town vote to authorize and empower the Board of Selectmen to prepare a plan laying out and defining Holly Way, Elm Lane, Autumn Drive, Attaquin Street, Pocknomet Street, Hornbeam Lane, Lantern Lane, Beechwood Drive, Hemlock Drive and Fir Court; and to accomplish said purpose and for expenses incidental and related thereto, the Town vote to appropriate and transfer from the Overlay Surplus Account \$15,000 to the Santuit Woods Roadways Account.

Motion passes unanimously at 7:38 PM.

Article 15

To see if the Town will vote to appropriate and transfer, pursuant to the provisions of M.G.L. Chapter 44B, §6 to reserve from the FY2012 estimated Community Preservation revenues, the following amounts;

\$134,988.55	10% for Historic purposes
\$134,988.55	10% for Affordable Community Housing purposes
\$1,079,908.41	To the FY2012 Community Preservation Fund Budgeted Reserve as recommended by the Community Preservation Committee,

or take any other action relating thereto.

Submitted by the Community Preservation Committee

Explanation: This article seeks to set aside 10% of the estimated Community Preservation Funds for Historic Resources and Affordable Community Housing purposes.

The vote of the CPC Committee was 5-3 in support of the article as presented.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 6-1.

Motion made by Selectman Thomas O'Hara.

Motion: I move the Town vote, pursuant to the provisions of M.G.L. Ch. 44B § 6, to reserve from the FY 2012 estimated Community Preservation revenues, \$134,988.55 for affordable community housing purposes, \$134,988.55 for historic resource purposes, and \$1,079,908.41 to the FY 2012 Community Preservation Fund Budgeted Reserve.

Motion passes unanimously at 7:44 PM.

Article 16

To see if the Town will vote to appropriate and transfer \$357,000 from the Community Preservation Fund, in accordance with the provisions of M.G.L., Chapter 44B, §5, for the purposes of funding the Santuit Pond Restoration Project by implementation of an artificial aeration and circulation system, including any necessary costs and expenses related thereto, as recommended by the Community Preservation Committee, or take any other action relating thereto.

Submitted by the Community Preservation Act Committee

Explanation: This article seeks funding from the Community Preservation Open Space Reserve to assist in the remediation and restoration of Santuit Pond by using an artificial aeration and circulation system. The project, as identified, would reduce the algae growth in Santuit Pond, and replenish the oxygen throughout the pond using remedial technology.

The goal of the project is to improve water quality and minimize algae bloom in Santuit Pond, a 170-acre great pond listed in the Massachusetts List of Impaired Waters, due to high nutrient levels and the abundance of noxious aquatic plants.

*The vote of the Community Preservation Committee was unanimous, 7-0-1 (Mrs. Buschenfeldt abstained) to approve the application submitted by the Town of Mashpee DPW and co-applicants, the Friends of Santuit Pond and Mashpee Environmental Coalition. The Committee was also in agreement the funding would be contingent upon the Town of Mashpee providing future maintenance funding.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 4 yes, 1 no, 2 recused.

Motion made by Selectman Wayne Taylor.

Motion: I move the Town vote to appropriate and transfer \$357,000, in accordance with the provisions of M.G.L., Chapter 44B, §5, for the purposes of funding the Santuit Pond Restoration Project by implementation of an artificial aeration and circulation system, including any necessary costs and expenses related thereto, as recommended by the Community Preservation Committee.

Motion passes at 8:12 PM.

Article 17

To see if the Town will vote to amend the Code of the Town of Mashpee by adding Chapter 104 – Secondhand Dealers and Secondhand Collectors. as follows:

Chapter 104 - SECONDHAND DEALERS AND SECONDHAND COLLECTORS.

GENERAL REFERENCES

Noncriminal disposition - See Ch. 1, Art. 1.

Jurisdiction of Licensing Authority - See Ch. 121, a 121-6F.

Junk on streets - See Ch. 206, Art. 1. 1

§104.1 Definitions:

ACCEPTABLE IDENTIFICATION means either:

- A. A current driver's license that includes the date of birth, photograph, and physical description of the person offering the identification; or
- B. Two other pieces of current identification, at least one of which is issued by a governmental agency or subdivision and includes the date of birth, photograph and physical description of the person offering the identification.

POLICE CHIEF means the Chief of Police of the Town of Mashpee or his or her designee.

REGULATED PROPERTY means the following used property:

- A. Precious metals, including but not limited to, any metal valued for its character, rarity, beauty or quality, including gold, silver, copper, platinum or other metals, whether as a separate item or in combination with other items.
- B. Precious gems, including but not limited to, any gem valued for its character, rarity, beauty or quality, including diamonds, rubies, emeralds, sapphires or pearls, or other precious or semi-precious gems or stones, whether as a separate item or in combination with other items or as a piece of jewelry.
- C. Watches and jewelry containing precious metals or precious gems, including but not limited to, rings, necklaces, pendants, earrings, brooches, chains, pocket watches, wrist watches, or stop watches.
- D. Sterling silver flatware, including but not limited to, knives, forks, spoons, candlesticks, coffee and tea sets, or ornamental objects.
- E. Any electronic audio, video or photographic and optical equipment along with computer or computer equipment or recordings in any form.
- F. Any power tools or equipment.
- G. Musical instruments.
- H. Sporting equipment.
- I. Automobiles, boats, planes, motorcycles in whole or taken in parts, or any other type machinery.
- J. Collectibles.

SECONDHAND COLLECTOR: shall have the same meaning as the term "junk collector" MG.L. c. 140 §56.

SECONDHAND DEALER: shall have the same meaning as the term "junk dealer" and keeper of a shop for the purchase, sale or barter of junk, old metals or second hand articles in G .L c. 140 § 54.

§104.2 Issuance, Renewal and Revocation of Licenses Required:

- A. Secondhand Collectors and Secondhand Dealers must obtain a license to conduct the activities defined in Sections 54 and 56 of General Laws Chapter 140, including any Regulated Property, unless otherwise provided in this Bylaw.
- B. The Licensing Authority of the Town of Mashpee may, after notice and a public hearing deny an original or renewal application for a Secondhand Collector License or revoke an issued license if it has probable cause to believe any of the following conditions exist after a public hearing:
 - 1) The applicant, or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has owned or operated a Secondhand Dealer or Secondhand Collector business regulated under this regulation or any substantially similar license and, within the five years prior to the application date;
 - 2) Has had a Secondhand Dealer or Secondhand Collector License revoked for a reason that would be grounds for a denial or revocation pursuant this ordinance; or
 - 3) The Secondhand Dealer or Secondhand Collector business has been found to constitute a public nuisance.
 - 4) The licensee applicant, or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has been convicted of a felony or any crime involving a false statement or within 15 years prior to the application date.
 - 5) The applicant has:
 - a. Knowingly made a false statement in the application.
 - b. Knowingly omitted information requested to be disclosed in the application
 - c. Completed the application with reckless disregard for the truth or accuracy of the statements made therein.
 - 6) A lawful inspection of the Secondhand Dealer or Secondhand Collector business premises by the Police Chief or his designee has been unjustifiably refused by a person who in part or whole, manages or operates the business.
 - 7) The Secondhand Dealer or Secondhand Collector business, the applicant or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has more than five violations of these regulations, any State or Federal law, or any combination thereof within a two-year period, including the two years prior to the application date.
 - 8) The Secondhand Dealer or Secondhand Collector business, the applicant or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business has been convicted of any law of the Commonwealth of Massachusetts that is contrary to the type of secondhand

business to be conducted such as, but not limited to: Receiving stolen property, any form of breaking and entering, Larceny's from a person, or any other form of larceny, or any form of aggravated assault, as verified by a CORI by the Chief of Police or his designee.

- 9) Such other grounds as the Authority determines to be in the public interest or in violation of the conditions of the license per any law or regulation of the commonwealth or the Town of Mashpee.

§104.3 Inspection of Property and Records:

- A. Whenever necessary to make an inspection to enforce the provisions of this ordinance, or when the Chief of Police or his designee has reasonable grounds to believe more likely than not that a specific item of regulated property held by a Secondhand Dealer or Secondhand Collector is associated with criminal conduct, the Chief of Police or his designee may enter the premises of the Secondhand Dealer or Secondhand Collector at any reasonable time, provided that the premises are occupied at the time of entry and the Chief of Police or his designee presents proper official identification at or near the time of entry. If entry is refused, the Chief of Police or his designee shall have recourse to every remedy provided by law to secure entry, including an administrative search warrant or a criminal search warrant.
- B. Authority to inspect Secondhand Dealer or Secondhand Collector premises under this regulation is in addition to and not in limitation of the authority the town or the Chief of Police or any police officer of any jurisdiction would otherwise have to enter the business premises.
- C. Once allowed to enter the premises of the Secondhand Dealer or Secondhand Collector, the Chief of Police or his designee may inspect property kept there. The Chief of Police or his designee may also inspect the business records associated with regulated property and perform any duty imposed upon the town or Chief of Police by this regulation.

§104.4 Record Keeping:

- A. The Chief of Police or his designee shall prepare a purchase report form and make copies available to all Secondhand Dealers or Secondhand Collectors. Secondhand Dealers or Secondhand Collectors shall utilize these forms, or any other substantially similar form approved by the Chief of Police, to record purchases of regulated property. The form may request any information reasonably calculated to help the Chief of Police or his designee identify the purchaser, the seller or the property associated with the purchase of regulated property.
- B. Whenever a Secondhand Dealers or Secondhand Collectors purchases regulated property for business purposes, the Secondhand Dealers or Secondhand Collectors shall obtain acceptable identification from the seller along with the seller's current residence address. The Secondhand Dealers or Secondhand Collectors shall fill out a purchase report form in all relevant aspects at the time of the purchase. A purchase report form as required to be filled out by this section shall be filled out in legible English. The seller shall sign his or her name on the filled-out form.
- C. A digital photograph will be taken of each item purchased. The photograph may be stored electronically, but are subject to the same record keeping requirements as listed in section 6-A. Copies of the photographs will be made available to the Chief of Police in a timely manner, and are subject to the same rights of inspection as listed in section 8.
- D. The licensee shall cause to be delivered to the Mashpee Police Department on a weekly

basis, a copy of all transactions recorded in the ledger on the form provided. If, during the preceding week such Secondhand Dealers or Secondhand Collectors has taken no articles in, he/she shall make out and deliver to the Police Department a report of such fact.

§104.5 Posting of Licenses and Notices:

- A. All licenses shall be conspicuously posted in an accessible place on the licensed premises, available at all times to the proper authorities.
- B. A secondhand dealer shall post the following notice no smaller than eight and one-half inches by 11 inches with lettering no smaller than one-fourth of an inch in height outside each point of entry intended for patron use and at or near each place where a secondhand dealer purchases used property in the regular course of business.

§104.6 Notice:

The sale or attempted sale of property to a secondhand dealer without consent of the property's owner is punishable by a civil penalty not to exceed \$300 per item.

If a significant number of the patrons of the regular second-hand dealer use a language other than English as a primary language, the notice shall be worded in both English and the primary language or languages of the patrons.

104.7 Purchases by a Secondhand Dealer or Secondhand Collector:

- A. A secondhand dealer or secondhand collector shall not make any cash purchase in an amount that exceeds \$250.00 (two hundred and fifty dollars and zero cents).
- B. A secondhand dealer must not carry on the business of buying or selling secondhand property except at the premises designated in the dealership license.
- C. A secondhand dealer must not purchase any property whose serial number or other identifiable marking has been wholly or partially tampered with or removed.
- D. A secondhand dealer or secondhand collector may not purchase any item from any person under the age of 18 (eighteen).

§104.8 Unauthorized Sale of Property:

- A. No secondhand dealer or secondhand collector may purchase or sell any property of any type without the consent of the owner.
- B. No purchase will be made from anyone under the age of 18.

§104.9 Holding Periods:

- A. A copy of every purchase report form filled out as required by this ordinance shall be kept on the premises of the Secondhand Dealer or Secondhand Collector business during normal business hours for at least three (3) years from the date of purchase. The report form shall be subject to inspection by the Chief of Police or his designee.
- B. All regulated property in the categories of precious metals or precious gems, defined in Sec 2 A-D, purchased by a Secondhand Dealer or Secondhand Collector and required to be recorded on a purchase report form shall be held by said Secondhand Dealer or

Secondhand Collector for at least 30 days from the date of purchase.

- C. All other regulated property purchased by a Secondhand Dealer or Secondhand Collector and required to be recorded on a purchase report form shall be held by said Secondhand Dealer or Secondhand Collector for at least 21 days from the date of purchase.
- D. The Secondhand Dealer or Secondhand Collector shall maintain the property in substantially the same form as when purchased and shall not alter, exchange or commingle the property. During the holding period the regulated property shall be kept on the business premises during normal business hours and shall be subject to inspection by the Chief of Police or his designee.
- E. The Chief of Police or his designee may give written notice to a Junk Dealer or Junk Collector holding property that the Chief of Police or his designee has reasonable grounds to believe more likely than not a specific item of regulated property is associated with criminal conduct. The Secondhand Dealer or Secondhand Collector holding the regulated property shall then continue to hold the property specified in the notice in the same manner and place as required under subsection (D) of this section until released by the Chief of Police or his designee.
- F. The holding period for any item of regulated property shall not exceed 180 days from the date of purchase.
- G. A Secondhand Dealer or Secondhand Collector may from time to time request in writing that the Chief of Police shorten the length of the holding period. If the Chief of Police or his designee determines relief from the holding period is appropriate due to unreasonable hardship, the Chief of Police or his designee shall provide the Secondhand Dealer or Secondhand Collector who requested relief with written authorization to sell, transfer or otherwise dispose of the regulated property. The request shall identify the property and state the basis or bases of the unreasonable hardship or hardships. The authorization shall be effective only upon delivery of the written authorization to the second-hand dealer.
- H. Secondhand Dealers, retailing or wholesaling used property limited to the following, are exempt from section B above:
 - 1) Used clothing, furniture, footwear, and house ware items such as dishes, pots, pans, cooking utensils, and cutlery; or
 - 2) Used clothing, furniture, footwear and house ware items such as dishes, pots, pans, cooking utensils and cutlery, obtained only from or through a "registered charity" or by donations; or
 - 3) Used books, papers, or magazines.

§104.10. Violations and Penalties:

- A. Violation of any provision of this chapter may be prosecuted, as a criminal matter or as an administrative procedure or by the method provided in 21D of Chapter 40 of the General Laws. Each violation shall be considered separately.
- B. Whoever violates the provisions of this chapter shall be fined not more than \$300. The Licensing Authority may suspend, revoke or modify any license issued by them whenever they have reasonable cause to believe the licensee has violated the terms, conditions or regulations pertaining to such license. Any violation of this chapter enforced by the methods provided in 21D of Chapter 40 of the General Laws shall be subject to a fine of \$250.

§104.11 Severability:

Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.

or take any other action relating thereto.

Submitted by the Board of Selectmen

Explanation: This article will establish bylaws which set rules, regulations and fines for second hand dealers within the town of Mashpee.

Motion made and seconded to dispense with reading of Article.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Selectman Mike Richardson.

Motion: I move the Town vote to amend the Code of the Town of Mashpee by adding Chapter 104 – Secondhand Dealers and Secondhand Collectors as printed in the warrant with the following exceptions:

104.1(H) Definitions - add “and memorabilia”;

104.1(J) Definitions delete J. Collectibles;

Under Definitions add “This Bylaw is applicable to those Secondhand Dealers who are in the business of buying and selling regulated property”;

104.2(A) Delete “Defined in Sections 54 and 56 of General Laws Chapter 140, including any Regulated Property, unless otherwise provided by law.;

104.2 - add:

C. Transient metals dealers/buyers must obtain a Secondhand Dealer and Collectors License in compliance with Section 104.2 of this Bylaw at least 14 days prior to any event soliciting the purchase within the Town of Mashpee of any of the items outlined in this Bylaw.

1. This shall include, but not be limited to, home parties, hotel/motel venues and any other similar event.
2. All such purchases shall be subject to the same rules as licensed Secondhand Dealers and Collectors (Junk Dealers) with the additional requirement that the itemized documentation of all purchased items shall be submitted to the Mashpee Police Department within 24 hours after the conclusion of the event.
3. Transient metals dealers/buyers are defined as any individual, business, or company that does not have a permanent facility within the Town of Mashpee where purchase and sales records are held and available for inspection by the Mashpee Police Department in compliance with this bylaw.

104.4(A) – amend to read “The Chief of Police or his designee shall DESIGN a purchase report form and make copies available to all Secondhand Dealers or Secondhand Collectors”.

104.7(B) – add “at the premises designated in the dealership license except where the size of the item makes purchasing difficult”.

104.9(C) – to read “All other regulated property purchased by a Secondhand Dealer or Secondhand Collector are required to be recorded on a purchase report form shall be held by said Secondhand Dealer or Secondhand Collector for at least 21 days from the date of purchase.

104.9(E) – insert on last line “subsection B” of this section ...

104.10 – insert Section Letter (A)

104.10(B) – add “Massachusetts” General Laws on last line.

Motion passes unanimously at 8:18 PM.

Article 18

To see if the Town will vote to appropriate and transfer from the Community Preservation Fund \$64,160, in accordance with the provisions of M.G.L., Chapter 44B, §5 for the purposes of funding Recreational Improvements to the Pickerel Cove Recreational Area, including any necessary costs and expenses related thereto, as recommended by the Community Preservation Committee, or take any other action relating thereto.

Submitted by the Community Preservation Committee

Explanation: This article seeks funding from the Community Preservation Budgeted Reserve to re-create a 2 acre open recreation field, construct a secondary parking area for 6 vehicles, and the establishment of a car-top boat access with a drop-off on Pickerel Cove on Mashpee/Wakeby Pond. All work is intended to comply with the Land Management Agreement by and between the Town of Mashpee and Department of Fish and Game.

The recreation of the field will provide recreational open space for residents and visitors to the parcel, and will serve the Mashpee Leisure Services Summer Day Camp Program. The low impact car-top canoe and kayak launch area will provide residents and visitors the opportunity to easily launch into Pickerel Cove. In addition to the parking, the launch area will consist of a switchback trail. A railing shall be installed along the proposed trail and a seasonal platform will be placed in the water to accommodate the launching. No trees are proposed to be removed to access the shoreline. Construction is proposed for the Spring of 2012.

The Community Preservation Committee voted 7-0 to recommend the article to the October Town Meeting.

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 5-2.

Motion made by Selectman Carol Sherman.

Motion: I move the Town vote to appropriate and transfer from the Community Preservation Fund Budgeted Reserve \$64,160, in accordance with the provisions of M.G.L., Chapter 44B, §5 for the purposes of funding Recreational Improvements to the Pickerel Cove Recreational Area, including any necessary costs and expenses related thereto, as recommended by the Community Preservation Committee.

Motion passes at 8:44 PM.

Article 19

To see if the Town will vote to amend Section 174-27.1 Development Agreements of the Zoning By-law as follows:

Amend Subsection B. to replace the current language of the definitions of “Development Agreement” and “Lead Community” and add a definition for “Participating Parties” as follows:

DEVELOPMENT AGREEMENT - a voluntary binding contract entered into among the Town and/or the Cape Cod Commission, and/or another municipality or municipalities within which a development is proposed, a state agency or agencies and a holder of majority legal or equitable interest in the subject property or their authorized agent (Qualified Applicant). The principal purpose of the contract is to define the scope and substance of the proposed development.

LEAD COMMUNITY - Where the Commission is not a party, the Town or, where more than one municipality is a signatory on a development agreement, the municipality that the involved municipalities agree shall be the Lead Community, or where the involved municipalities cannot agree on a Lead Community, the municipality having the largest area encompassed by the proposed development. The Commission, municipality(ies), state agency(ies), and Qualified Applicants may enter into a development agreement.

PARTICIPATING PARTIES – those entities who have been selected by a Qualified Applicant to consider a particular Development Agreement, including the Qualified Applicant, and a municipality(ies), and/or a state agency(ies).”;

Replace the current language of Subsection C. with the following:

C. **Who May Participate in a Development Agreement.**

A development agreement may be executed by and between the Town, a Qualified Applicant and

1. the Cape Cod Commission; or
2. the Cape Cod Commission and another municipality or municipalities within which the development is proposed; or
3. the Cape Cod Commission and another municipality or municipalities within which the development is proposed and with a state agency or agencies; or
4. another municipality or municipalities within which the development is proposed; or
5. a municipality or municipalities within which the development is proposed and a state agency or agencies.

Those parties selected to participate are referred to within this Section as “Participating Parties.”

Amend Subsection D. by adding the phrase “by the Town” to its title, by substituting the phrase “Participating Parties” for the phrase “authorized parties” where it appears in current Subsections D.1. and D.2. and by adding the following paragraph after the title:

“Development Agreements involving the Cape Cod Commission shall be negotiated and executed in accordance with Section 5 of Chapter D of the Code of the Cape Cod Commission Regulations of General Application.”;

Amend Subsection E.1. by adding the word “fair” before the phrase “affordable housing” and by replacing the phrase “recreational facilities” with the phrase “recreational uses”;

Replace the fourth sentence of Subsection E.2. with the following:

“A Development Agreement shall vest land use development rights as described in Section 14(a) of the Cape Cod Commission Act and Section 7 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, for a period or periods specified in the Agreement. When the Town is not a party to a Development Agreement, then land use development rights shall not vest with regard to the Town’s development by-laws and regulations. When the Commission is not a party to the Development Agreement, no land use development rights shall vest with respect to the Regional Policy Plan, Commission regulations and decision and the property shall be subject to subsequent changes in the Commission’s regulations and decisions.”

Replace the current Subsection F. with the following:

“F. Procedural requirements for Development Agreements where the Cape Cod Commission is a Party to the Agreement.

Where the Cape Cod Commission is to be a party to a Development Agreement, the procedural requirements established in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised shall be followed and no such Development Agreement shall be valid unless and until the requirements of said Section 5 of Chapter D have been complied with in full.”;

Amend the title of Subsection G. to capitalize the word “Party”;

Amend Subsection G.1.(a) to read as follows:

“(a) A fully completed Cape Cod Commission Development Agreement Application Form, including a certified list of abutters prepared by the Assessors in the town or towns where the abutters are located;”;

Amend Subsection G.1.(b) by adding the words “and survey” after “legal description”;

Amend Subsection G.1.(d) by amending the words “population densities, building densities and height” to read “residential population densities, and building densities and height”;

Amend Subsection G.1.(f) by amending the phrase “public purposes” to read “public recreation, conservation, agricultural, aquacultural or historic purposes”;

Amend Subsection G.1.(g) by replacing the phrase “approved or needed to be approved” with the word “needed”;

Amend Subsection G.1.(h) by replacing the word “indicating” with the word “acknowledging” and by adding the phrase “or Participating Parties” after the phrase Qualified Applicant”;

Amend Subsection G.1.(j) to read as follows:

“(j) Additional data and analysis necessary to assess the impact of the proposed development, as determined by the Planning Board, or where the Town is not the Lead Community, the appropriate body in said Lead Community.”;

Amend Subsection G.2. by adding the phrase “pursuant to Subsection G above” at the end of the second sentence;

Amend Subsection G.3. by replacing the phrase “shall assume the responsibility for overseeing” in the first sentence with the phrase “shall oversee”;

Replace the first sentence of Subsection G.4. with the following:

“When more than one municipality is a party to the Agreement, the Lead Community shall oversee the Development Agreement process as specified in this section. Any conflicts between the Lead Community and other municipality(ies) which are a party to the Agreement shall be resolved through negotiation by the relevant parties.”;

Amend Subsection G.5. by replacing the term “Sections 5(a) and (d)” with the term “Sections 5(d)(1-3)”;

Amend Subsection G.6. by replacing the word “bear” with the word “pay”;

Delete Subsection G.7. in its entirety and replace it with the following:

“7. The Town/Lead Community shall review proposed Development Agreements for their consistency with Local Comprehensive Plans. A Development Agreement that is inconsistent with local zoning shall require either a zoning amendment or shall be subject to the grant of such zoning relief as may be needed under the zoning by-laws of the Town as may be needed to resolve the inconsistency, unless the Development Agreement is approved by the same entity and the same quantum of votes as would be required to amend the zoning by-law of the Town. Thereupon, any departure from zoning expressly and specifically authorized by the Development Agreement shall be deemed effective.”;

Delete Subsection G.9. in its entirety and replace it with the following:

“9. The town clerks of the contracting town or towns shall issue a certificate which certifies the effective date of the Development Agreement. The effective date of the Development Agreement shall be the date of recording at the Barnstable County Registry of Deeds. The certificate shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds. The Town or Lead Community shall record the certificate, to which the Development Agreement shall be attached as an exhibit, in the Barnstable County Registry of Deeds and shall submit proof of such recording to the Clerk of the Cape Cod Commission within fourteen (14) days of such recording. The Qualified Applicant shall bear the expense of recording.”;

Delete Subsection G.10. in its entirety and replace it with the following:

“10. The Board of Selectmen, or the appropriate body in the Lead Community if it is not Mashpee, may establish the fees or charges imposed for filing and processing of each application or document provided for or required under this section. Any other municipality or state agency which is also a party to the Development Agreement may establish additional fees and charges to be imposed for the filing and processing of each application and document provided for under Chapter D of the Code of Cape Cod Commission Regulations of General Application.”;

Amend the title of Subsection H. to read “Limitations on, and duration of, Development Agreements”;

Amend Subsection H.2. by adding the words “of Chapter D” after the words “Section 7” in the fourth sentence and replace the first sentence in its entirety with the following:

“A Development Agreement will commence upon the date of recording of the certificate(s) by the Clerk of the Cape Cod Commission or by the town clerk(s), as appropriate, and terminate as agreed by the

parties, in writing, except as otherwise provided in this subsection and section 5(q) of Chapter D of the Cape Cod Commission Regulations of General Application, as revised.”;

Amend Subsection H.3. by adding the words “or Participating Party” after the term “Qualified Applicant”;

Delete Subsection I. in its entirety and replace it with the following:

“I. Amendments and Rescission.

A Development Agreement may be amended or rescinded by petition of a Participating Party as provided below. Requirements for hearings, notice, costs and filing and recording of the amendments and rescissions of Development Agreements shall be followed as provided in sections 5 and 6 of Chapter D of the Cape Cod Commission Regulations of General Application, as revised.

1. Minor Modification: Amendments that are de minimis changes or technical corrections, as determined by both the Commission and/or the Planning Board (or the appropriate body in the Lead Community if it is not Mashpee) may be made without following the notice and public hearing requirements provided in Sections F and G above. Where the Cape Cod Commission is a Participating Party, such changes may be authorized by the Regulatory Committee of the Commission and a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement.
2. Major Modification: When the Cape Cod Commission is a party to the Development Agreement, any party to the Development Agreement may petition to amend or rescind the Development Agreement. The Participating Parties may petition to rescind the Development Agreement; the Cape Cod Commission may petition to rescind the Development Agreement only in the event of failure of consideration. Such petition shall be made in writing, and shall state in detail the petitioner’s reasons for amendment or rescission. The petitioning party shall provide notice to all parties to the Development Agreement.

When the Commission is not a party to the Development Agreement, any other party to the Development Agreement may petition the Town or Lead Community to amend or rescind the Development Agreement. The petitioning party shall provide notice to all parties to the Development Agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Commission with a copy of the petition seeking such amendment or rescission. When the Town or Lead Community initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the Agreement.

Where the Cape Cod Commission is a Participating Party, such changes may be authorized by the Cape Cod Commission and a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement. Where the Cape Cod Commission is not a Participating Party, such changes may be authorized by a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement.

3. Any Development Agreement may contain provisions further regulating its amendment or rescission.”;

In addition to the above amendments, capitalize the term “Development Agreement(s)” wherever it appears in Section 174-27.1;

or take any other action relating thereto.

Submitted by Planning Board

Explanation: The Cape Cod Commission has amended its regulations (Chapter D) regarding Development Agreements and promulgated a new model zoning by-law with which Mashpee’s current Development Agreement zoning by-law (which was based on the Commission’s previous model by-law) must be brought into conformance, according to the Commission, in order for the Town to enter into Development Agreements. As the Planning Board, Cape Cod Commission and Mashpee Commons LP are currently in the process of preparing a Development Agreement regarding two proposed new sections of the Mashpee Commons development, this article has been submitted to allow the Town to continue participation in that process. The amendments consist primarily of minor language changes, with the exception of a revised definition of the purpose of a “Development Agreement”, a new definition of “Participating Parties” and an entirely new process for “Minor” and “Major” modifications of an approved Development Agreement.

The Board of Selectmen recommends approval by a vote of -0.

The Finance Committee recommends approval.

At its meeting on October 5, 2011, the Planning Board voted 4-0 to recommend approval of Article 19, provided that the following sentence be added to §174-27.1, Subsection I.1.: Where the Cape Cod Commission is not a participating part, such changes may be authorized by a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as the appropriate vote or approval of all other parties to the original Development Agreement.

Motion made and seconded to dispense with reading of Article.

Motion made by Selectman John Cahalane.

Motion: I move the Town vote to approve Article 19 as printed in the warrant, except that the following sentence should be added to Subsection I.1.: “Where the Cape Cod Commission is not a Participating Party, such changes may be authorized by a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as the appropriate vote or approval of all other parties to the original Development Agreement.” and with the exception of the phrase “or take any other action relating thereto”.

Motion passes unanimously at 8:46 PM.

Article 20

To see if the Town will vote to accept the layouts as public ways of Taurus Drive, partial of Polaris Drive (House #97 to start of Taurus), and partial of Gemini Road (House #19 and ending at Taurus Drive), as shown on a plan entitled “Road Easement Taking Plan “Holland Mills” Subdivision in Mashpee, Massachusetts (Barnstable County)”, dated December 13, 2000 and prepared by The BSC Group, Inc., which layouts shall have been filed in the Office of the Town Clerk, not later than seven days prior to the date of the vote hereunder and to authorize the Board of Selectmen to acquire by gift, purchase or eminent domain taking any land necessary for the purposes of such ways as so laid out, and to appropriate and transfer from available funds \$153,290 to the Great Hay Estates Roadways Account and to raise said appropriation, the Treasurer, with the approval of the Board of Selectmen, be authorized to borrow at one time, or from time to time, under and pursuant to Chapter 44 Section 7 or 8 or any other enabling authority for such purchase or taking and layout including costs of constructing such ways and legal

financing and other costs incidental and related thereto; and further authorize the Board of Selectmen to assess betterments to the owners of the land abutting the ways, or take any other action relating thereto.

Submitted by Petition

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

At its meeting on October 5, 2011, the Planning Board voted 4-0 to recommend approval of Article 20.

Motion made by Fred Groehl.

Motion: I move the Town vote to accept the layouts as public ways of Taurus Drive, partial of Polaris Drive (House #97 to start of Taurus), and partial of Gemini Road (House #19 and ending at Taurus Drive), as shown on a plan entitled "Road Easement Taking Plan "Holland Mills" Subdivision in Mashpee, Massachusetts (Barnstable County)", dated December 13, 2000 and prepared by The BSC Group, Inc., which layouts shall have been filed in the Office of the Town Clerk, not later than seven days prior to the date of the vote hereunder and to authorize the Board of Selectmen to acquire by gift, purchase or eminent domain taking any land necessary for the purposes of such ways as so laid out, and to appropriate \$153,290 to the Great Hay Estates Roadways Account and to authorize the Treasurer, with the approval of the Board of Selectmen, to borrow at one time, or from time to time, under and pursuant to Chapter 44, Section 7 or 8 or any other enabling authority for such purchase or taking and layout including costs of constructing such ways and legal financing and other costs incidental and related thereto; and further authorize the Board of Selectmen to assess betterments to the owners of the land abutting the ways.

Motion passes unanimously at 8:51 PM.

Article 21

To see if the Town will vote to authorize and empower the Board of Selectmen to prepare a plan laying out and defining Shields Road, Tobisset Street, Lyn Court, Tricia Lane, Pequot Road, Pequot Court, Michelle Lane and Nobska Road; and to accomplish said purpose and for expenses incidental and related thereto, the Town vote to raise and appropriate or transfer from available funds for appropriation \$5,000 to the Santuit Woods Roadways Account, or take any other action relating thereto.

Submitted by Petition

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by John Cotton.

Motion: I move the Town vote to authorize and empower the Board of Selectmen to prepare a plan laying out and defining Shields Road, Tobisset Street, Lyn Court, Tricia Lane, Pequot Road, Pequot Court, Michelle Lane and Nobska Road; and to accomplish said purpose and for expenses incidental and related thereto, the Town vote to appropriate and transfer from the Overlay Surplus Account \$5,000 to the Santuit Woods Roadways Account.

Motion passes unanimously at 8:52 PM.

Article 22

To see if the Town of Mashpee will raise and appropriate or borrow the money needed to design and construct a bike path on Old Barnstable Rd. beginning at route 151 and continuing to the Falmouth town line or take any other action relating to.

Submitted by Petition

Explanation: Growing up on Old Barnstable Rd. made it easy to walk to and from school but also called for its dangers also. Walking, running or even riding a bike down the winding, curving street means you are literally sharing the road with cars driving not being able to see around the next curve or hill. Friday July 1, 2011, I once again walked down Old Barnstable Rd. to and from the Mashpee High School to attend the community picnic and fireworks. I once again was dodging cars, walking on the pavement when walking on the side wasn't possible. Sadly that same night a 16 year old lost his life on Old Barnstable Rd. walking home from that same event; He was stuck walking on the road because he and friends had nowhere else to walk. This accident could have been avoided. There are many of our own residents walking, running, biking up and down Old Barnstable Rd. are either younger or older than that 16 year old struck. Let us avoid another fatal accident where a pedestrian is involved and build a bike path on Old Barnstable Rd.

The Board of Selectmen does not recommend approval by a vote of 4-1.

The Finance Committee does not recommend approval.

Motion made by Matthew Thompson.

Motion: I move the Article be indefinitely postponed at 9:02 PM.

Motion to indefinitely postpone passes at 9:02PM.

Article 23

To see if the Town will vote to authorize and empower the Board of Selectmen to prepare a plan laying out and defining Pleasant Park Drive; and to accomplish said purpose and for expenses incidental and related thereto, the Town vote to raise and appropriate or transfer from available funds for appropriation \$5,000 to the Pleasant Park Drive Roadways Account, or take any other action relating thereto.

Submitted by Petition

The Board of Selectmen recommends approval by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made by Michael Lane.

Motion: I move the Town vote to authorize and empower the Board of Selectmen to prepare a plan laying out and defining Pleasant Park Drive; and to accomplish said purpose and for expenses incidental and related thereto, the Town vote to appropriate and transfer from the Overlay Surplus Account \$5,000 to the Pleasant Park Drive Roadways Account.

Motion passes unanimously at 9:03 PM.

Article 24

SALE AND APPLICATION OF LAWN FERTILIZER

Sections:

1. Purpose and intent.
2. Applicability.
3. Definitions.
4. Use and application of law fertilizer.
5. Exemptions to use and application of lawn fertilizer.
6. Display for sale of fertilizer containing phosphorous.
7. Lawn Care Companies and Commercial Providers.
8. Enforcement and penalties for improperly applying lawn fertilizer or displaying for sale.
9. Severability clause.

1. Purpose and intent.

The purpose of this article is to regulate the sale of lawn fertilizer containing nutrients and contaminants, including phosphorous, to all land located within the boundaries of the Town of Mashpee and to land owned by the Town of Mashpee, so as to prevent such from entering any portion of Mashpee's rivers, ponds, lakes, oceans and its tributaries thereof in order to reduce non-point source pollution and to improve water quality as envisioned under the federal Clean Water Act.

2. Applicability.

This article applies to all land located within the boundaries of the Town of Mashpee and to any land owned by the Town of Mashpee. The ordinance codified in this article shall take effect 30 days after voter approval at town Meeting on October 3, 2011.

3. Definitions.

"Fertilizer" means any substance containing a recognized plant nutrient used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth.

"Lawn fertilizer" means any fertilizer whether distributed by a property owner, renter, commercial entity or the Town of Mashpee, distributed for nonagricultural use such as lawns, golf courses, parks and cemeteries. Lawn fertilizer does not include fertilizer products intended primarily for gardening, tree, shrub and indoor plant application.

"Turf" means non-crop land planted and closely mowed, managed grasses including, but not limited to, residential and commercial property, private golf courses, and property owned by federal, state, or local units of government, including parks, recreation areas, and public golf courses. Turf does not mean pasture, hayland, hay, or turf grown on turf farms.

4. Use and application of lawn fertilizer.

Except as provided in Section 5 below, no person shall apply any lawn fertilizer that is labeled as containing more than zero percent phosphorous or any other compound containing phosphorous, such as phosphate.

No person shall apply any lawn fertilizer when the ground is frozen.

No person shall cause lawn fertilizer to be applied to or run onto any impervious surface including parking lots, roadways and sidewalks. If such an application, occurs the fertilizer must be immediately contained and collected and either legally applied to turf or placed in an appropriate container.

5. Exemptions to use and application of lawn fertilizer.

The prohibition against the use of fertilizer under Section 4 shall not apply to the following:

Newly established turf or lawn areas during their first growing season.

Turf or lawn areas where soil tests performed within the past three years confirm that the phosphorous levels are deficient based upon the standards established by the Massachusetts Department of Agriculture. The fertilizer application shall not contain an amount of phosphorous exceeding the amount and rate of application recommended based on the soil test.

Gardens, including vegetable and flower, trees, shrubs, and indoor applications, including green houses.

Yard waste compost or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

The application of fertilizer under subsection A above must meet the standards established by the Massachusetts Department of Environmental Protection.

6. Display for sale of fertilizer containing phosphorous.

Effective December 1 2011 no person shall display for sale any lawn fertilizer that is labeled as containing more than zero percent phosphorous, or compound containing phosphorous, such as phosphate. Lawn fertilizer that contains more than zero percent phosphorus may be stored off the sales floor and may be sold upon presentation of a deficiency of phosphorous statement. The business shall advise customers by signs that soil test kits and fertilizer containing phosphorous is available.

Effective December 2011 a sign referencing the regulations set forth in this chapter and the effects of phosphorous on Mashpee's rivers, ponds, lakes oceans and its tributaries thereof must be prominently displayed where fertilizers are sold. A business shall be deemed to have complied with this requirement by displaying a sign consistent with a sample sign available from the Mashpee Board of Health.

7. Lawn Care Companies and Commercial Providers

Lawn Care Companies and all Commercial Providers of fertilization and/or weed control are prohibited from using any product containing phosphorous. If any turf is deemed to need phosphorous as indicated by a tissue, soil, or other test by a laboratory (or any similar method approved by the Massachusetts Department of Agriculture and such test has been performed within the last three years indicates that the level of available phosphorus in the soil is insufficient to support healthy turf growth may, upon paying a fee as determined by the Department of Agriculture, apply for a waiver after paying any prescribed fee to be issued by the Board of Health or other town agency as determined by the Board of Selectmen. This waiver must be presented to a business prior to a business selling a fertilizer containing any phosphorous.

When seeding, lawn care companies should select grasses appropriate for the area, such as fescues mixed with rye grass.

Except for the final cut of the season, grasses shall be mowed no shorter than 2 inches and all clippings shall remain on the lawn surface.

8. Enforcement and penalties for applying lawn fertilizer or displaying for sale in violation of this Bylaw.

If any turf is deemed to need phosphorous as indicated by a tissue, soil, or other test by either a commercially available soil testing kit, or a certified laboratory analysis (or any similar method approved by the Board of Health,) and such test has been performed within the last three years indicates that the level of available phosphorous in the soil is insufficient to support healthy turf growth may, upon paying a fee of \$35.00 apply for a waiver to be issued by the Board of health or other town agency as determined by the Board of Selectmen. This waiver must be presented to a business prior to a business selling a fertilizer containing any phosphorous.

Violations of this chapter will be enforced by the Board of Health or any town body designated by the Board of Selectmen.

Any person violating this chapter is guilty of an infraction and is subject to a fine. The fine for the first offence shall be \$150 and \$300 for each subsequent offence or an amount as established by a resolution of the Board of Selectmen.

9. Severability clause.

If any section, provision or portion of this chapter is ruled invalid by a court, the remainder of the chapter shall not for that reason be rendered ineffective or invalid.

Submitted by Petition

The Board of Selectmen takes no position by a vote of 5-0.

The Finance Committee does not recommend Article 3-2.

Motion made and seconded to dispense with reading of Article.

Motion made by George Schmidt.

Motion: I move the Town vote to approve Article 24 as printed in the warrant with the exception of the phrase “or take any other action relating thereto”.

Motion defeated 55 yes to 64 no at 9:27 PM.

Article 25

To see if the town will vote to amend Article 2.1 – Annual Town Meeting and Election of the Town’s By-Laws as follows:

Paragraph F of Article 2.1 – Annual Town Meeting and Election By-law would be replaced in its entirety by the following language:

“Effective January 1, 2012, the regular annual Town election of Town officers will be held on the first Saturday in May immediately following the May Annual Town Meeting, except when that Saturday immediately precedes Mother’s Day, and then the election will be held on the following Saturday at such place as determined by the Selectmen.”

This will replace the existing language in Paragraph F of Article 2.1, “The annual Town election of Town officers will be held the first Saturday in May immediately following the May Annual Town Meeting, at such place as determined by the Selectmen.”

Submitted by Petition

Explanation: This article would move the annual Town **general election** which is held on the first Saturday in May following the Town's Annual Meeting (which typically places the general election on Mother's Day weekend) to the next Saturday, if Mother's Day is immediately following that date. The historical turnout for the May Town election has been very low compared to the number of people voting in the November State and Presidential elections.

The Board of Selectmen takes no position by a vote of 5-0.

The Finance Committee recommends approval by a vote of 7-0.

Motion made and seconded to dispense with reading of Article.

Motion made by Don Meyers.

Motion: I move the Town vote to approve Article 25 as printed in the warrant.

Motion passes unanimously at 9:30 PM.

Article 26

To see if the Town will vote to amend Article 2.1 – Annual Town Meeting and Election of the Town's By-Laws and Article 3 of the Mashpee Town Charter as follows:

Paragraph F of Article 2.1 – Annual Town Meeting Election By-law would be replaced in its entirety by the following language:

“Effective January 1, 2013, the regular town election shall be held on the first Tuesday following the first Monday in November of each odd-numbered year, at such place as determined by the Selectmen.”

This will replace the existing language in Paragraph F of Article 2.1, “The annual Town election of Town officers will be held the first Saturday in May immediately following the May Annual Town Meeting, at such place as determined by the Selectmen.”

Add paragraph F.1 to Article 2.1 – Annual Town Meeting and Election By-law containing the following language:

“The following election transition rules will be applied on a one-time bases. At a date designated by the Town Clerk, but no later than January 4, 2013, the Town Clerk shall duly post and hold a public meeting in which the Town Clerk shall conduct a random drawing of all elected positions to determine those positions whose terms will begin on either the second Monday of 2013 or on the second Monday of 2015, for the length of term as set forth by the Town Charter. This will create where possible staggered positions for each Board, Committee or any other position filled by ballot at Town elections in the Town of Mashpee. The remaining unexpired terms for all currently elected positions would be adjusted accordingly based on the result of the random drawing.”

Article 3, Section 3-2, Paragraph A – Board of Selectmen, Composition, Term of Office will be amended by the following language to change the length of the term for this elected position:

“terms of four years” will replace current language of “terms of three years”

Article 3, Section 3-3, Paragraph A – School Committee, Composition, Term of Office will be amended by the following language to change the length of the term of this elected position:

“terms of four years” will replace current language of “terms of three years”

Article 3, Section 3-4, Paragraph A – Town Clerk, Term of Office will be amended by the following language to change the length of the term of this elected position:

“term of two years” will replace current language of “term of three years”

Article 3, Section 3-5, Paragraph A – Board of Library Trustees, Composition, Term of Office will be amended by the following language to change the length of term for this elected position:

“term of four years” will replace current language of “terms of three years”

Article 3, Section 3-6, Paragraph A – Town Moderator, Mode of Election, Term of Office will be amended by the following language to change the length of term for this elected position:

“term of two years” will replace current language of “term of three years”

Article 3, Section 3-7, Paragraph A – Planning Board, Composition, Mode of Election, Term of Office will be amended by the following language to change the length of term for this elected position:

“terms of four years” will replace current language of “term of three years”

Article 3, Section 3-8, Paragraph A – Mashpee Housing Authority, Composition, Mode of Appointment and Election, Term of Office will be amended by the following language to change the length of term for this elected position:

“terms of four years” will replace current language of “term of three years

or take any other action relating thereto.

Submitted by Petition

Explanation: This article would move the annual Town general election which is held on the first Saturday in May following the Town’s Annual Meeting (which typically places the general election on Mother’s Day weekend) to November effective in 2013. This would also change the Town general elections from being held annually to being held bi-annual every two (2) years in the odd-numbered years (i.e., 2013, 2015, etc.), opposite the even years (i.e., 2014, 2016, etc.) when there are Massachusetts State elections. The historical turnout for the May Town election has been very low compared to the number of people voting in the November State and Presidential elections. This change would also reduce some of the costs incurred by the Town for holding an election each May and then again in some years in November, a savings to the Town of approximately \$5,000. This change would also reduce the impact on the Schools by eliminating a day during the school week that was previously needed to setup the election equipment in May.

The terms for all elected officials on the multi-member bodies (Board of Selectmen, School Committee and Planning Board) would change from three (3) years to four (4) in order to coincide with a bi-annual election format. The terms for singular positions in the Town government structure (Town Clerk and Town Moderator) would change from three (3) years to two (2) years. The terms for elected officials on the multi-member Mashpee Housing Authority would change from five (5) years to four (4) years in order to coincide and be consistent with a bi-annual election format.

The change in terms would start with a transition period with the first bi-annual elections to be held in November 2013. Elected positions whose terms would start in November 2013 will be determined by a random drawing to be held no later than January 4, 2013. The remaining unexpired terms for all currently elected positions would be adjusted accordingly based on the results of the random drawing to coincide

with the new bi-annual election format (i.e., a term that is currently set to expire in May of 2013 would be extended to November 2013).

Motion made and seconded to dispense with reading of Article.

The Board of Selectmen takes no position by a vote of 5-0.

Motion: I move Article 26 as printed in the warrant.

Motion: I make a motion to amend to replace the first paragraph in Article 26 which firmly states to see if the town will vote to amend article 2.1 the Annual Town Meeting and Election of the Town's bylaws and Article 3 of the Mashpee Town Charter as follows, this would be replaced by the following text:

To see if the Town will vote to take the following actions

1. Amend article 2.1 Annual Town meeting and election of the towns bylaws
2. Petition the Commonwealth of Massachusetts to enact a home rule special act to make changes concerning the length of terms for elected officials contained in Article 3 of the Home Rule Charter of the Town of Mashpee, the changes are outlined as listed in the Article.

Motion to amend is defeated at 9:44 PM.

Motion made to indefinitely postpone at 9:44 PM.

Motion to indefinitely postpone passes at 9:44 PM.

Town meeting adjourned at 9:44 PM.